



September 1, 2016

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street SW
Washington DC 20554

Re: Written *Ex Parte* Communication, MB Docket No. 16-41

Dear Ms. Dortch:

In a letter filed earlier this week, the American Cable Association (ACA) asked the Commission to restrict bundling by programmers, including bundling “of a Spanish-language channel for cable systems with very few Spanish-speaking customers” and bundling of “an urban-interest channel for rural cable systems.”¹ While the National Association of Broadcasters (NAB) has repeatedly demonstrated that ACA’s more general claims about bundling are unfounded,² ACA’s latest request is extremely disturbing and highlights how Commission interference in programming negotiations is almost certain to result in less diversity on pay TV systems.

More specifically, ACA’s request would have clear and extremely unfortunate exclusionary effects, and should concern the Commission that its otherwise good intentions could be exploited by pay TV providers to target their programming channels in a manner more profitable for them but less diverse for consumers. ACA’s proposal appears to suggest, for example, that a Bounce TV multicast channel or a cable network such as TVOne would only be welcome on a system with a large number of African-American subscribers. Or perhaps that Myx TV shouldn’t be seen outside areas with large Asian-American populations, or that Spanish-language programmers should be stymied in their efforts to introduce new channels. Undoubtedly, these outcomes are not in the public interest. There is simply no reason for the Commission to adopt policies ensuring that niche programming *only* reaches

¹ See *Ex Parte* Letter from Michael Nilsson and Ross Lieberman, American Cable Association, MB Docket No. 16-41 (Aug. 26, 2016) (ACA Letter).

² See, e.g., Comments of the National Association of Broadcasters, MB Docket No. 16-41, at 3-7 (March 30, 2016) (NAB Comments).

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a narrow audience.³ Encouraging MVPDs to segregate their programming lineups according to race or ethnicity would not only undermine the fundamental goals of the Communications Act, but also leave us a less informed and educated nation.

Furthermore, the survival of niche programming channels, especially ones aimed at minority or non-English-speaking audiences, depends in part on their ability to reach a nationwide or near-nationwide footprint. While NAB supports efforts to help new entrants break into the pay TV programming marketplace, the Commission should be very careful that any new rules not actively harm the ability of existing niche channels to survive and thrive.

NAB urges the Commission to reject ACA's cynical view, which facilitates the ability of pay TV operators to discriminate against "urban" or "Spanish-language" channels. These and myriad other channels help make today's video marketplace richer and more varied than ever before, and they should be allowed to flourish. The Commission should embrace these opportunities, rather than allow bottom-line profit-maximization to drive its diversity policy.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Rick Kaplan", with a long horizontal line extending to the right.

Rick Kaplan
General Counsel and Executive Vice President
Legal and Regulatory Affairs

³ To the contrary, the Commission previously has taken steps to prohibit discrimination against programming based on the race or ethnicity of its audience. See *Promoting Diversification of Ownership In the Broadcasting Services*, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922, 5941-42 ¶¶49-50 (2008) (requiring the inclusion of non-discrimination language in advertising contracts to prevent advertising firms from using "no urban/no Spanish" dictates against certain broadcast stations).